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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL THOMAS CLINE,

Defendant and Appellant.

D073995

(Super. Ct. No. SCE373664)

APPEAL from a judgment of the Superior Court of San Diego County, Robert F. O'Neill and Patricia K. Cookson, Judges. Affirmed.

Bruce L. Kotler, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Mary Katherine Strickland, Deputy Attorneys General, for Plaintiff and Respondent.

Following the denial of his motion to suppress evidence, Daniel Thomas Cline pleaded guilty to two counts of possession of a controlled substance for sale under

section 11378 and two counts of possession of a controlled substance for sale under section 11351, both of the Health and Safety Code. As to one count under each section, Cline admitted the allegation that he committed the offense while released from custody. (Pen. Code, § 12022.1, subd. (b).) The trial court struck one of the allegations and sentenced Cline to a total term of five years eight months in prison. It suspended execution of that sentence, however, and granted formal probation.

Cline appeals. He argues that the court erred by denying his motion to suppress evidence obtained during two contacts with police. We conclude the trial court properly denied Cline's motion to suppress evidence obtained as a result of both contacts, and therefore affirm.

FACTS

For purposes of this section, we state the evidence in the light most favorable to the court's ruling denying the motion to suppress. (See *People v. Tully* (2012) 54 Cal.4th 952, 979 (*Tully*).) Because Cline appeals following a guilty plea, we draw the following statement of facts from the transcript of the combined preliminary hearing and suppression hearing.

On August 19, 2017, around 10:00 p.m., a police officer saw Cline riding his bicycle on the sidewalk, in violation of a local municipal ordinance. Cline was wearing a backpack. The officer stopped Cline, who identified himself by a false name and birth date. The officer contacted his dispatcher to confirm Cline's identity. The dispatcher could not find any record of the name and birth date Cline provided, so another police officer monitoring the communication volunteered to come to the location with a

fingerprint scanner and facial recognition device. While the first officer was waiting with Cline, he asked whether Cline had any weapons or anything illegal on him. Cline said he did not. The officer asked whether he could confirm that, and Cline responded, " 'Yes, sir.' "

The second officer arrived. Using the fingerprint scanner and facial recognition device, the officer discovered Cline's true identity. The officers detained Cline on suspicion of providing false identifying information in violation of Penal Code section 148.9. The second officer again asked Cline whether he had any weapons or anything illegal on him. Cline again said he did not, and he gave the officers permission to check. As he was agreeing to the search, Cline "pointed to his backpack and started taking it off." The first officer believed that Cline had consented to a search of his backpack and went through its contents. The officer explained that Cline's actions in removing the backpack after the officer asked for his consent to search made the officer "believe that he was insinuating his backpack was included," and that Cline did not withdraw his consent to search his backpack at any time.

Inside the backpack, the officer found syringes, approximately \$50 in cash, a digital scale, multiple small plastic bags, an airsoft handgun, and a black container with a numerical lock (described as a "numbered code lock") that was six to eight inches long and three or four inches wide. The container was locked and emitted a vinegar odor consistent with heroin. Cline said he had received the container from another person at Walmart earlier. Cline did not specifically give the officers separate consent to search

the container. During the search of his belongings, Cline asked if he could leave because he needed to catch a trolley, and he asked " 'Do you really have to search everything?' "

The first officer gave the locked container to the second officer, who examined it with his flashlight. The second officer opened the container by some unknown means. Inside the container were 23 small plastic bags containing a brown tar-like substance and eight bags containing a crystalline substance. The officers placed Cline under arrest. The substances later tested presumptively positive for heroin and amphetamines, respectively.

Around three weeks later, a different police officer saw Cline standing on a sidewalk near a trolley station. It was around midnight, and the business where Cline was standing was closed. Cline was wearing a backpack, and he had miscellaneous debris and property around him. The officer believed that Cline may have been illegally lodging at that location, in violation of Penal Code section 647, subdivision (e).

Another officer was present, who was also the second officer to arrive at the earlier contact with Cline. The two officers were in separate patrol cars. They watched Cline for around 20 minutes, and they did not see anything significant. But the second officer recognized Cline, and they decided they had "probable cause" to contact him regarding illegal lodging.

The officers, in their patrol cars, circled around a parking lot, activated their emergency lights, and parked approximately 15 feet away from Cline. One officer parked to one side of Cline, and the other officer parked on the other side. As the first officer exited his vehicle, Cline approached him. Cline was no longer wearing the backpack. It was on the ground, approximately 10 or 15 feet away.

The officer asked Cline if he could speak with him and obtained consent to search his person. The officer then asked Cline if he could search his backpack. Cline agreed, but he told the officer it was not his. The officer retrieved the backpack and asked Cline again whether it was his. Cline said no. Inside the backpack the officer found a black replica handgun, a digital scale, a number of small plastic bags, and several empty syringes.

The other officer, who had contacted Cline previously, went over to the location where the backpack was found. The officer found a clear prescription bottle with 14 small plastic bags containing a brown tar-like substance. Next to the bottle, the officer found a small bindle containing a white powdery substance. The substances later tested presumptively positive for heroin and methamphetamines, respectively.

PROCEDURAL HISTORY

Before the preliminary hearing, Cline moved to suppress evidence obtained as a result of his two contacts with police. He argued that the arrests and searches were accomplished without a warrant and therefore presumptively illegal. In response, the prosecution maintained that (1) Cline was lawfully detained during each contact, (2) Cline consented to the search of his backpack and its contents during the first contact, and (3) Cline had no reasonable expectation of privacy in his backpack during the second contact because he had abandoned it.

At the hearing, the parties addressed each contact based on the testimony presented. As to the first contact, defense counsel argued that the detention was unconstitutionally prolonged and, even if Cline consented to the search of his backpack,

that consent did not extend to the search of the locked container. The prosecution responded that the detention was not prolonged, Cline consented to the search of the backpack and its contents, and the police had the right to open any container therein. As to the second contact, defense counsel argued that Cline was unlawfully detained because the police did not have reasonable suspicion that he was illegally lodging and any evidence obtained was tainted by that illegality. The prosecution maintained that Cline's detention was lawful and the evidence showed that Cline abandoned the backpack before he was detained.

The trial court (Judge Robert F. O'Neill) addressed the suppression motion in comprehensive comments on the record. The court found that the first detention was not unreasonably prolonged, since Cline had given officers a false name and birth date. It then addressed "the search of the locked container." The court noted that the better course of action would be to obtain a warrant to search a container that was locked. It found, however, that the officers had probable cause to search in the container based on the suspicious vinegar smell and that Cline had disclaimed ownership of the container in any event.

The court believed the second contact was not a detention, but consensual. It was skeptical that the evidence supported reasonable suspicion of illegal lodging, but it decided it did not need to definitively address that issue. It found that Cline consented to the search of the backpack, and disclaimed ownership of it, and therefore the search was proper. The court denied the motion to suppress in its entirety.

Cline filed a renewed motion to suppress under Penal Code section 1538.5, subdivision (i), and the prosecution opposed. After hearing argument, the trial court (Judge Patricia K. Cookson) denied the renewed motion as well. As to the first contact, the court reasoned that the detention was proper and not unreasonably prolonged. It found that Cline consented to the search of the backpack and, therefore, the police had the right to search its contents.¹ As to the second contact, the court found that the police did not have reasonable suspicion to detain Cline, but that the contact appeared to be consensual. And, in any event, Cline had no reasonable expectation of privacy in the backpack because he abandoned it, so he could not challenge the evidence obtained as a result of its search.

DISCUSSION

I

Standard of Review

"The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." ' ' (*Robey*

¹ The court noted it had viewed the officers' body-worn camera footage which was submitted to it. Because only a portion of the footage was shown to the testifying officer in connection with the first suppression motion, the court suggested that the parties stipulate to allow the court to consider the additional footage depicting the actual examination of the locked container. Both parties declined and the court therefore did not consider this evidence. No additional evidence was presented as to how the locked container was opened.

v. Superior Court (2013) 56 Cal.4th 1218, 1224 (*Robey*).) "Accordingly, the burden of proving the justification for the warrantless search or seizure lies squarely with the prosecution." (*People v. Johnson* (2006) 38 Cal.4th 717, 723.)

" 'In reviewing a trial court's ruling on a motion to suppress evidence, we defer to that court's factual findings, express or implied, if they are supported by substantial evidence. [Citation.] We exercise our independent judgment in determining whether, on the facts presented, the search or seizure was reasonable under the Fourth Amendment.' " (*Robey, supra*, 56 Cal.4th at p. 1223.) "Thus, while we ultimately exercise our independent judgment to determine the constitutional propriety of a search or seizure, we do so within the context of historical facts determined by the trial court." (*Tully, supra*, 54 Cal.4th at p. 979.)

II

First Contact: Consent to Search the Locked Container

Cline first contends the court erred by denying his motion to suppress evidence found as a result of the search of the locked container in his backpack. He argues the search was outside the scope of his consent to search his backpack. We disagree.

A.

"[The United States Supreme Court has] long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so. [Citation.] The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would

the typical reasonable person have understood by the exchange between the officer and the suspect?" (*Fla. v. Jimeno* (1991) 500 U.S. 248, 250-251 (*Jimeno*)). " 'Whether the search remained within the boundaries of the consent is a question of fact to be determined from the totality of [the] circumstances. [Citation.] Unless clearly erroneous, we uphold the trial court's determination.' " (*Tully, supra*, 54 Cal.4th at pp. 983-984.)

In *Jimeno*, the United States Supreme Court considered the relationship between a general statement of consent and the particular search undertaken by the investigating officer. It framed its specific issue as follows: "[W]hether it is reasonable for an officer to consider a suspect's general consent to a search of his car to include consent to examine a paper bag lying on the floor of the car." (*Jimeno, supra*, 500 U.S. at p. 251.) In that case, the officer told the suspect that he wanted to search the car for drugs. (*Ibid.*) Because "[t]he scope of a search is generally defined by its expressed object" and "[a] reasonable person may be expected to know that narcotics are generally carried in some form of a container," "it was objectively reasonable for the police to conclude that the general consent to search [the suspect's] car included consent to search containers within that car which might bear drugs." (*Ibid.*) The Court therefore upheld the search of the paper bag which contained cocaine. (*Ibid.*)

The *Jimeno* court distinguished *State v. Wells* (Fla. 1989) 539 So.2d 464 (*Wells*), where the Florida Supreme Court "held that consent to search the trunk of a car did not include authorization to *pry open* a locked briefcase found inside the trunk." (*Jimeno*,

supra, 500 U.S. at p. 251, discussing *Wells* (italics added).)² The *Jimeno* court commented that "[i]t is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the *breaking open* of a locked briefcase within the trunk, but it is otherwise with respect to a closed paper bag." (*Id.* at pp. 251-252, italics added.)

B.

Different courts have analyzed the scope of a suspect's consent in light of *Jimeno*'s ruling and the distinction the Court drew between opening a paper bag and breaking into a locked briefcase. No bright-line rule emerges from our examination of these authorities (including authorities outside of California). We do not believe the distinction drawn by the *Jimeno* Court, in its dicta, requires us to focus exclusively on whether the container here was "locked" in determining whether the trial court's ruling was correct. Instead, as we discuss, we conclude it is appropriate to evaluate the totality of the circumstances, taking into consideration the following non-exclusive factors: (1) the expressed object of the search; (2) whether those items that are being searched for would reasonably be expected to be found in the specific container at issue; (3) the expectation of privacy

² In *Wells*, the police officers received permission from the defendant to search the trunk of his vehicle, and then transported the vehicle to a facility under contract with the state to perform a search. The police officers were able to open the trunk with a key and found a locked suitcase inside. Employees of the state facility, under the direction of the police, "attempted to pry open the suitcase with a knife. Some ten minutes later they succeeded" and found a large amount of marijuana inside. (*Wells, supra*, 539 So.2d at p. 466.) Before his vehicle was impounded, the defendant had stated he did not know what was in the trunk. (*Ibid.*)

manifested by the suspect in his or her use of a specific container; (4) the manner in which the container at issue was opened; and (5) a suspect's verbal and nonverbal conduct shedding light on the scope of the initial consent, or manifesting a withdrawal of the consent given. The fact that a container is locked (or capable of being locked) is likewise an appropriate factor to consider, but we do not believe this factor alone is dispositive.

"The scope of a search is generally defined by its expressed object." (*Jimeno*, *supra*, 500 U.S. at p. 251.) In *People v. Crenshaw* (1992) 9 Cal.App.4th 1403 (*Crenshaw*), a suspect gave consent to search his car " 'for drugs,' " including specifically the trunk, the glove compartment, and the interior. (*Id.* at p. 1407.) A police officer conducted the search, which included unscrewing and removing a door vent. (*Id.* at p. 1408.) *Crenshaw* held that the officer's search was reasonable under *Jimeno*, emphasizing that the suspect "knew the object of the officer's search, to wit, drugs" and the door panel "reasonably could be expected to contain the object of the search." (*Id.* at p. 1415.) The court concluded, "[The suspect's] consent to search the car for drugs, under these facts, included consent to remove the door vent and search the door panel which might reasonably hold drugs." (*Ibid.*) The *Crenshaw* court further found that the search

was reasonable because the door vent was not destroyed or rendered useless,³ and the suspect never limited the scope of the search despite an opportunity to do so.⁴

By contrast, in *People v. Cantor* (2007) 149 Cal.App.4th 961 (*Cantor*), the court relied on *Jimeno* and *Wells* to find the search of a record cleaning machine, which police opened with a screwdriver, unreasonable under the Fourth Amendment. The suspect in *Cantor* gave consent after police asked, " 'Nothing illegal in the car or anything like that? Mind if I check real quick and get you on your way?' " (*Id.* at p. 964.) *Cantor* held that the resulting search was unreasonable on two grounds. First, the duration of the search, 15 minutes, exceeded what a reasonable person would understand a " 'real quick' 'check' " of the car to be. (*Id.* at p. 965.)⁵ Second, "[e]ven if the length of the search were not an issue, no typically reasonable person would have understood defendant's consent to extend to unscrewing the back panel of the record-cleaning machine." (*Id.* at p. 966.) Citing *Wells*, *Cantor* emphasized the manner in which the machine could be accessed and

³ See *Crenshaw, supra*, 9 Cal.App.4th at p. 1415 ["Unlike the situation in *Wells*, there is no evidence the door vent was mutilated, rendered useless or otherwise damaged during the process of removal"].

⁴ See *Crenshaw, supra*, 9 Cal.App.4th at p. 1415 ["Although seated a short distance away in a police vehicle (because of outstanding arrest warrants) at the time the panel was removed, there is no indication in the record *Crenshaw* ever expressly or impliedly made any attempt to limit the scope of the search as it progressed during the period he remained outside the vehicle or at the time he was placed in the police vehicle."].

⁵ Before locating the record cleaner, the officer had searched the passenger compartment, retrieved the car keys from the ignition and searched the trunk, checked under the hood of defendant's car, and then rechecked the car's interior several times—all without finding anything illegal. The officer subsequently located the record cleaner when he was removing items from the trunk while waiting for a police dog to arrive. (*Cantor, supra*, 149 Cal.App.4th at p. 964.)

the expectation of privacy evidenced by how the machine had been secured. The court explained, "A piece of equipment that *can only be opened with a screwdriver* is analogous to a locked or sealed container. Defendant manifested an expectation of privacy by placing the drugs inside the record cleaning machine and *screwing it shut*. By unscrewing the back panel, the officer rendered that act pointless and violated defendant's privacy expectation." (*Id.* at p. 967, italics added.)

Other courts have considered similar factors as those considered by *Cantor* and *Crenshaw* in evaluating the scope and reasonableness of consent searches in light of *Jimeno*. We do not attempt to summarize all out-of-state authorities. Instead, we highlight instructive cases which discuss factors we believe are relevant to a totality of the circumstances evaluation of consent searches.

In *United States v. Mendoza-Gonzalez* (5th Cir. 2003) 318 F.3d 663 (*Mendoza-Gonzalez*), the defendant consented to allow border patrol agents at a permanent immigration checkpoint to "look in" his truck, but argued that the search of a cardboard box inside of the trailer, which the agents opened by cutting a piece of taping holding it shut, exceeded the scope of his consent. (*Id.* at pp. 665-666.) The court rejected this argument and, in doing so, articulated two interests that led the Supreme Court to distinguish between a closed paper bag and a locked briefcase in *Jimeno*: "(1) the owner's expectation of privacy as demonstrated by his attempt to lock or otherwise secure the container; and (2) the owner's interest in preserving the physical integrity of the container and the functionality of its contents." (*Id.* at p. 671.) The court concluded the defendant's expectation of privacy in the boxes at issue did not rise to the level of certain

locked containers which "require specific knowledge of a combination, possession of a key, or a demonstration of significant force to open." (*Ibid.*) Unlike those types of containers, the "boxes at issue . . . could be easily opened by removing or cutting through a single piece of tape." (*Ibid.*) Turning to the second interest, *Mendoza-Gonzalez* reasoned that the agent did not "damage the box, render it useless, or endanger its contents during the course of the search." (*Id.* at p. 672.) The box was opened "with minimal effort" and its structure could be "restored" to its original condition. (*Ibid.*)

The court in *United States v. Jones* (4th Cir. 2004) 356 F.3d 529 (*Jones*) held that, where a police officer was given permission to search a suspect's duffle bag, it was objectively reasonable for the officer to search a locked metal box contained in the bag.⁶ (*Id.* at pp. 532, 534-535.) The court first noted that, when an officer receives a general consent to search a particular area, the officer "does not need to return to ask for fresh consent to search a closed container located within that area." (*Id.* at p. 534 [noting that the object of the search was "illicit drugs"].) The court then considered the suspect's claim that "*locked* containers are different from *closed* containers and do not fall within the scope of a suspect's general consent to search a larger area." (*Id.* at p. 534.) Because the court's analysis of this question is instructive, and similar to the type of multi-factored approach we adopt here, we quote the court's reasoning at length:

"[Jones] is correct that a suspect's general, blanket consent to search a given area or item, by itself, would not likely permit officers to *break into* a locked container located within the area being

⁶ The officer opened the box using a set of keys located inside the bag, and found crack cocaine and cash inside the box. (*Jones, supra*, 356 F.3d at p. 532.)

searched. *See Jimeno*, 500 U.S. at 251-52. However, the scope of a consent search is not limited only to those areas or items for which specific verbal permission is granted. Consent may be supplied by non-verbal conduct as well. [Citation.] Thus, a suspect's failure to object (or withdraw his consent) when an officer exceeds limits allegedly set by the suspect is a strong indicator that the search was within the proper bounds of the consent search." (*Id.* at p. 534.)

The court concluded it was objectively reasonable to believe that the defendant's express consent to search the duffle bag extended to the locked metal box based on the defendant's actions after he was informed of the object of the search (volunteering to give the officers his duffle bag), his knowledge that the keys were inside the bag, his failure to qualify his consent in any way, and his failure to object to the opening of the locked box in his presence which thereby "confirmed the propriety of the search." (*Jones, supra*, 356 F.3d at pp. 534-535.)

In *United States v. Kim* (3d Cir. 1994) 27 F.3d 947 (*Kim*), the court ruled that a suspect's consent to search his luggage for drugs extended to a search of factory-sealed cans inside the luggage. The court rejected the suspect's attempt to distinguish *Jimeno* based on the nature of the sealed cans compared to the paper bag at issue in that case. The court explained that "the distinction between the sealed cans in this case and the folded bags in *Jimeno* does not mandate a different result because they both are what a reasonable person would believe could function as drug containers." (*Id.* at p. 956; see *id.* at p. 957 [relying on the additional fact that the suspect "could have limited his consent to certain items, but he had the burden to express that limitation [citation], which he did not do."].)

In *State v. Odom* (N.D. 2006) 722 N.W.2d 370, the court ruled that it was objectively reasonable for police to search a locked safe based on the suspect's general consent to search his hotel room. (*Id.* at pp. 373-374.) The court based its ruling on the suspect's knowledge that the object of the search was narcotics, the fact that narcotics were likely to be hidden in the locked safe, the lack of damage or destruction to the safe (which was opened using a master key obtained from the hotel manager after the suspect denied having a key), and the suspect's failure to "withdraw or limit his consent to search the hotel room" or to indicate that his consent did not extend to the safe. (*Id.* at pp. 372-374.)

As already noted, several other cases have considered similar issues when determining the reasonable scope of consent searches. (See, e.g., *United States v. Osage* (10th Cir. 2000) 235 F.3d 518, 519-520 [general consent to search suitcase did not extend to destruction of a sealed can inside the suitcase which would "render it completely useless for its intended function"]; *United States v. Jones*. (D.Kan. 2007) 501 F.Supp.2d 1284, 1302 [in determining whether trooper exceeded scope of suspect's consent, the proper inquiry does not turn on whether the container at issue, a gift-wrapped package, more closely resembles a paper bag or locked briefcase, but instead depends on the manner in which the container is opened—i.e., if it is "more like breaking open a locked [briefcase] than opening the folds of a closed paper bag"]; *J.J.V. v. State* (Fla.App. 2009) 17 So.3d 881, 885 [locked console in defendant's car was like the locked briefcase in *Wells* because, "[i]n both cases, if law enforcement officers wanted access, they had to ask for the key or lock combination or use significant force to open the container"; if

defendant had wanted the officer to search the console, he would not have denied having a key and his denial "should have been objectively seen as an affirmative attempt to narrow the scope of his general consent"; *United States v. Gordon* (10th Cir. 1999) 173 F.3d 761, 766 [by voluntarily handing over his keys, defendant consented to the search of a locked container located inside of a larger bag that defendant was allowing police to search]; *United States v. Gutierrez-Mederos* (9th Cir. 1992) 965 F.2d 800, 804 [court's assessment regarding scope of consent "must extend to the manner in which [the officer] gained access to the containers"].) As our own Supreme Court noted in *People v. Jenkins* (2000) 22 Cal.4th 900, 975: "Other courts and commentators have observed that open-ended consent to search normally does not suggest that the person consenting would expect the search to be limited in any way, and that a general consent to search includes consent to pursue the stated object of the search by opening closed containers."⁷

⁷ We acknowledge language in cases which draw a distinction between locked and unlocked containers, those which attempt to do so, and those which decline to reach the issue. (See, e.g., *Cantor, supra*, 149 Cal.App.4th at p. 967 [concluding object searched was "analogous to a locked or sealed container"]; *Mendoza-Gonzalez, supra*, 318 F.3d at p. 670 ["The parties have invested significant energy into debating whether the brown boxes were 'closed' or 'sealed,' and whether they were more akin to 'locked' or 'unlocked' containers."]; *United States v. Snow* (2d Cir. 1995) 44 F.3d 133, 135 ["Neither [the duffel bag nor similar bag] was locked or otherwise secured, and no damage to the bags was required to gain access. We thus express no view on whether [the suspect's] consent would have extended to items like locked briefcases."].) Nonetheless, we reiterate that we do not believe *Jimeno* requires or supports treating this single factor (whether a container is locked or unlocked) as dispositive. Indeed, the apparent difficulty courts have in determining what situations are analogous to *Jimeno* versus *Wells* underscores the need for an approach that considers all the attendant circumstances surrounding the exchange between a suspect and the police—an approach which is entirely consistent with *Jimeno* in any event. (See *Jimeno, supra*, 500 U.S. at p. 249 ["The Fourth Amendment is satisfied when, under the circumstances, it is objectively reasonable for

C.

Based on the record here, we conclude the search of Cline's locked container was within the scope of his consent and therefore lawful.

As an initial matter, we address the Attorney General's contention that the record is ambiguous on the issue of whether the container was in fact locked. We agree the record is unclear on how the container was opened, but that is because the officer who actually opened the container did not testify at the preliminary hearing (and the body-worn camera footage was not presented for the court's consideration). In its comments after the preliminary hearing, the trial court noted it was unclear how the police officer opened the container. It stated, "I'm not quite sure how [the officer] got into that container, and maybe it wasn't, in fact, locked, it just appeared to be locked. I don't know the circumstances." The trial court's ruling, however, did not rely on any factual finding that the container was not locked. To the contrary, the court referred to the container as a "locked" container in its comments. The officer who testified at the preliminary hearing described what he found as "a black container with a lock on it," and that it had "a numbered code lock on the side and it was closed, so I could not see what was inside." Following the officer's first description of the container, both the prosecutor and defense counsel adopted the phrase "locked" container when questioning the witness:

"[Prosecutor]: Then lastly you said you found a locked container; is that correct? [¶]

the officer to believe that the scope of the suspect's consent permitted him to open a particular container within the automobile."]; *Tully, supra*, 54 Cal.4th at pp. 983-984 [" 'Whether the search remained within the boundaries of the consent is a question of fact to be determined from the totality of [the] circumstances.' "].)

[Witness]: Yes."; "[Defense counsel]: And there was a locked container inside that bag, correct? [¶] [Witness]: Yes." The evidence therefore establishes, at a minimum, that the container had a lock on it, and that it was opened by an unknown method. For purposes of our analysis, we will assume that the container was in fact locked since the trial court made no contrary finding to support its ruling and the record supports that inference.

It was reasonable for the officers to conclude Cline's consent extended to the container at issue. The officers explained to Cline that they were looking for weapons or anything illegal and Cline gave the officers consent to search his belongings, pointing to the backpack and removing it from his person for the officers to examine. (See *Jimeno*, *supra*, 500 U.S. at p. 251 ["A reasonable person may be expected to know that narcotics are generally carried in some form of a container."]; *Jones*, *supra*, 356 F.3d at p. 534 [consent may be supplied by nonverbal conduct].)

In addition to being fully aware of the object of the search, Cline presumably knew the container was in his backpack when he provided it to the officers, since he claimed he had just obtained it from someone at Walmart prior to the police contact. A reasonable person would know drugs (something illegal) could be found inside the container—given the description of the container and its dimensions, it was clearly a place where drugs could be hidden. (*Crenshaw*, *supra*, 9 Cal.App.4th at pp. 1414-1415 [door panel "reasonably could be expected to contain the object of the search," which were expressed to be drugs]; *Kim*, *supra*, 27 F.3d at p. 956 [reasonable person would believe sealed cans could function as drug containers].)

A heightened expectation of privacy can be evidenced by locking or sealing a container. (*Mendoza-Gonzalez, supra*, 318 F.3d at p. 671 [referring to expectation of privacy in locked containers which "require specific knowledge of a combination, possession of a key, or a demonstration of significant force to open."].)⁸ But use of a backpack can also evidence an expectation of privacy, and Cline willingly proffered his backpack for the officer's examination knowing that the locked container was inside and that the officers wanted to search for weapons or anything illegal, which would obviously include drugs inside a box. Based on Cline's actions here, we cannot say, without more, that one object within his backpack had a potentially greater privacy interest such that a reasonable person would understand it was not encompassed within the scope of his consent.

⁸ The Attorney General claims Cline did not have any reasonable expectation of privacy in the container because he told officers he "received it from another individual at Wal-Mart prior to the [police] contact." " 'It is settled law that a disclaimer of proprietary or possessory interest in the area searched or the evidence discovered terminates the legitimate expectation of privacy over such area or items.' " (*People v. Tolliver* (2008) 160 Cal.App.4th 1231, 1239 (*Tolliver*)). Although framed in the disjunctive, our Supreme Court has made clear that a suspect must disclaim both a proprietary *and* a possessory interest in the object in order to relinquish his legitimate expectation of privacy; otherwise, either interest may suffice. (*People v. Casares* (2016) 62 Cal.4th 808, 835-836 (*Casares*) [defendant had a reasonable expectation of privacy in a borrowed car, where he denied ownership of the car but was not asked whether he lawfully possessed it].) Here, the record does not support a finding that Cline disclaimed a possessory or ownership interest in the locked container. He was in possession of the container, and he did not claim ignorance about its existence or its origin. Cline's statement that he received the box from another individual at Walmart did not clearly address either ownership or possession; it merely told officers how he obtained it. Even if the statement could be interpreted as disclaiming *ownership*, the trial court could not reasonably infer based on this statement that Cline was not lawfully in possession of the container. (See *Casares*, at pp. 835-836.) He therefore had a legitimate expectation of privacy in it.

Although the method of accessing the container's contents was not specified, there is no evidence to suggest the officers had to break open the container or that they otherwise destroyed the container or rendered it useless. (See *Jimeno*, *supra*, 500 U.S. at pp. 251-252; *Crenshaw*, *supra*, 9 Cal.App.4th at p. 1415; *Mendoza-Gonzalez*, *supra*, 318 F.3d at p. 672.) The situation here is unlike *Cantor*, where the officers performed multiple searches (in which they found nothing of interest) over a prolonged period of time before focusing on the record cleaner and using a screwdriver to remove its backing and locating drugs. Here, the officers readily found drug paraphernalia and the container together in the same location. Based on the sequence of events, in contrast to *Cantor*, a reasonable person would view the scope of the respective searches differently and conclude the search here was not objectionable.

Furthermore, Cline placed no limitation on the officers' authority to search his belongings. He took no actions to withdraw his consent (*Crenshaw*, *supra*, 9 Cal.App.4th at p. 1415), including after the police located syringes, cash, a digital scale, and multiple plastic bags—signs of drug paraphernalia—in addition to the container which emitted a smell consistent with heroin.⁹ Officers are not required to ask specific permission to search each item they encounter. (*Jimeno*, *supra*, 500 U.S. at p. 252 [stating that if a suspect's consent "would reasonably be understood to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more explicit authorization."].)

⁹ We note that the Attorney General does not attempt to rely on the so-called "plain smell" doctrine to justify the warrantless search of the locked container. (See generally *Robey*, *supra*, 56 Cal.4th at pp. 1243-1254 (conc. opn. of Liu, J.).) We therefore have no occasion to consider the doctrine's validity or its applicability here.

Here, a reasonable person who witnessed this exchange would conclude the scope of the initial consent encompassed the ongoing search of the locked container—just as all the other items in Cline's backpack were being thoroughly examined.

Cline's statement, " 'Do you really have to search everything,' " can reasonably be construed as an acknowledgement that the scope of his consent included the container at issue—i.e., he was trying to determine whether the officers were actually going to complete the entire search he previously had authorized. His statement was not specific enough to evince withdrawal of his consent. (*Jones, supra*, 356 F.3d at p. 534 ["failure to object (or withdraw his consent) . . . is a strong indicator that the search was within the proper bounds of the consent search"].)

In sum, after looking at the exchange between the parties and the attendant circumstances, we conclude a reasonable person would have understood that Cline's authorization to search his backpack for illegal items included permission to search the locked container inside the backpack. Because the officers did not exceed the scope of Cline's consent when they examined the locked container within his backpack, the search was reasonable under the Fourth Amendment, and the trial court was not required to suppress evidence obtained as a result of the search. The trial court properly denied Cline's suppression motion as to the first contact with police.¹⁰

¹⁰ Under the heading, "The Evidence Was Properly Admitted Anyway," the Attorney General argues the good faith exception to the exclusionary rule applies here. Given our conclusion that the search of the locked container was not outside the scope of Cline's consent, we need not address this issue.

II

Second Contact: Unlawful Detention and Abandonment

Cline next contends the trial court erred by denying his motion to suppress evidence obtained as a result of the search of the backpack found during his second contact with police. He argues he had a reasonable expectation of privacy in the backpack, he was unlawfully detained, and his consent to search the backpack was tainted by his unlawful detention. We conclude Cline abandoned the backpack and therefore had no reasonable expectation of privacy in its contents or the area surrounding it. Cline's motion to suppress was properly denied as to the second contact with police.

" '[C]apacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.' " (*Casares, supra*, 62 Cal.4th at p. 835.)

"To obtain suppression of evidence discovered in an unlawful search, a defendant has the burden of proving that he had a legitimate expectation of privacy." (*Tolliver, supra*, 160 Cal.App.4th at p. 1239, citing *Rawlings v. Kentucky* (1980) 448 U.S. 98, 104.)

"It has long been settled . . . that a warrantless search and seizure involving abandoned property is not unlawful, because a person has no reasonable expectation of privacy in such property." (*People v. Parson* (2008) 44 Cal.4th 332, 345.) " '[T]he intent to abandon is determined by *objective* factors, not the defendant's subjective intent.

" 'Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other objective facts. [Citations.] Abandonment here is not meant in the strict property-right sense, but rests instead on whether the person so relinquished his interest

in the property that he no longer retained a reasonable expectation of privacy in it at the time of the search.' " [Citations.]' [Citation.] 'The question whether property is abandoned is an issue of fact, and the court's finding must be upheld if supported by substantial evidence.' " (*Id.* at p. 346.)

For example, in *In re Baraka H.* (1992) 6 Cal.App.4th 1039, 1042 (*Baraka H.*), police watched a juvenile conduct drug transactions with passing cars. During each transaction, the juvenile would walk to a crumpled paper bag he had left on the ground among some leaves. (*Ibid.*) Police officers arrested the juvenile, searched the bag, and found marijuana inside. (*Ibid.*) The reviewing court found that the juvenile had abandoned any reasonable expectation of privacy over the bag: "At the time of the search, the paper bag was not within appellant's immediate reach; indeed, appellant had taken pains to put it *out* of his apparent possession and control, for the manifest purpose of maintaining 'deniability' as to the bag and its contents in the event of the arrival of law enforcement officers." (*Id.* at pp. 1045-1046.) The juvenile "impliedly disclaimed any privacy interest by his conduct." (*Id.* at p. 1047.)

Similarly, the trial court here could reasonably find that Cline abandoned the backpack (and the drugs underneath) by leaving them on a public sidewalk and moving 10 to 15 feet away. Police had observed Cline with the backpack, but he subsequently made the conscious decision to leave it unattended in a public place. By his actions, Cline impliedly disclaimed any privacy interest in the backpack or the drugs underneath. (See *Baraka H.*, *supra*, 6 Cal.App.4th at p. 1047; see also *People v. Brown* (1990) 216 Cal.App.3d 1442, 1451 ["In this case, defendant's act of dropping the bag before

making a last ditch effort to evade the police supports the trial court's finding that defendant indeed abandoned the paper bag and lost any reasonable expectation of privacy in its contents."].)

Cline argues that he only abandoned the backpack in response to the officers' efforts to illegally detain him. Even assuming Cline was illegally detained, he has not shown that the abandonment occurred as a result of the illegal detention. The trial court could reasonably find that any detention occurred only *after* Cline abandoned the backpack. "In situations involving a show of authority, a person is seized 'if 'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave,' ' or ' "otherwise terminate the encounter," ' [citation], and if the person actually submits to the show of authority [citation]." (*People v. Brown* (2015) 61 Cal.4th 968, 974.) It is reasonable to conclude, based on the evidence here, that Cline had already left his backpack and the drugs on the sidewalk, and walked some distance away from them, when police officers parked their cars on either side of him with emergency lights flashing, arguably detaining him.

Because Cline had already abandoned the backpack and drugs when police detained him, the abandonment could not have been the result of any illegal detention. As one court explained, under analogous circumstances, "when defendant decided he was about to be detained, he eliminated any question about an illegal search by openly disposing of the contraband (tossing it over the fence). The contraband was therefore not an indispensable product of a detention, but an abandonment, and was properly seized." (*People v. Patrick* (1982) 135 Cal.App.3d 290, 292; see *California v. Hodari D.* (1991)

499 U.S. 621, 629 ["The cocaine abandoned while he was running was in this case not the fruit of a seizure, and his motion to exclude evidence of it was properly denied."].)

Cline's reliance on *People v. Verin* (1990) 220 Cal.App.3d 551 is unpersuasive. In *Verin*, the appellate court concluded that the police officer "actually *detained* appellant *before* appellant discarded the heroin." (*Id.* at p. 559.) Here, the trial court could reasonably find that Cline's detention occurred only *after* he abandoned the backpack and drugs. Cline's motion to suppress that evidence relating to the second police contact was properly denied.

DISPOSITION

The judgment is affirmed.

GUERRERO, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.